

COMPLAINT



PC-HI-0001-0001

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

AGNES SPEAR, ELAINE MAILE
SILVA, BERNADETTE KUKAHIA,
GYPSIE COTTON, ANN COCHRAN,
GENE SPURGEON, JEFFREY MUELLER,
JOHN PRINCE WILDER, MICHAEL
MCDONALD, DANIEL CHIPMAN, and
JOE MARTINEZ, individually and
on behalf of all other persons
similarly situated,

Plaintiffs,

vs.

GEORGE ARIYOSHI, FRANKLIN Y.K.
SUNN, MICHAEL KAKESAKO,
THEODORE SAKAI, EDWIN SHIMODA,
and HOWARD MURAI,

Defendants.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 14 1984

at 8 o'clock and 53 A min. M.
WALTER A. Y. H. CHINN, CLERK

DEPOSIT BANK

CIVIL NO. 84 1104

COMPLAINT; ~~SUMMONS~~ SUMMONS

(Class Action)

## COMPLAINT

On behalf of themselves and the class alleged herein, Plaintiffs state the following for their complaint against Defendants:

### I. PRELIMINARY STATEMENT

1. This is a class action brought by Plaintiffs on behalf of all inmates who are or will be confined at the Oahu Community Correctional Center in Honolulu, Hawaii (hereinafter OCCC) and the Hawaii Women's Correctional Facility in Kailua, Hawaii, and any of its annexes (hereinafter HWCF). Plaintiffs seek declaratory and injunctive relief for deprivations, under color of state law, of the rights, privileges, and immunities secured by the Constitution of the United States, and, in particular, those secured by the Eighth and Fourteenth Amendments thereof.

2. Plaintiffs specifically seek relief from conditions at these institutions which fall below the standards of human decency, deny basic human needs, and inflict needless suffering on prisoners. Plaintiffs incarcerated in OCCC and in HWCF further contend that they are forced to live in an environment where the ill effects of particular conditions, often exacerbated by other conditions, threaten their physical and mental well-being and result unnecessarily in their physical and mental deterioration. Plaintiffs at HWCF further state that Defendants have imposed upon them a repressive, arbitrary, and irrational

behavior modification program which is so totally devoid of penological justification that it is punitive.

3. OCCC now houses approximately 1,350 prisoners although it has a rated capacity of only 642. The population consists of both state pre-trial detainees and sentenced prisoners who are classified as medium security, as well as some federal inmates. HWCF now houses over 100 inmates. Its main facility, which has a design capacity of only 36, now houses approximately 87 inmates. The population consists of both pre-trial detainees and sentenced prisoners as well as some federal inmates.

## II. JURISDICTION

4. The claims for relief are filed under 42 U.S.C. § 1983 to redress injuries suffered by Plaintiffs and the class they represent for deprivation under color of state law of rights secured under the Eighth and Fourteenth Amendments. The claims also arise directly under the Eighth and Fourteenth Amendments. Accordingly, this Court has jurisdiction over the claims pursuant to 28 U.S.C. §§ 1331 and 1343(3).

5. Venue in the District of Hawaii is proper. Each of the Defendants resides in the District of Hawaii, and each of the claims for relief arose in this district.

## III. PARTIES

6. Each of the Plaintiffs is currently an inmate within the Corrections Division of the Hawaii Department of Social Services and Housing and is incarcerated in OCCC or HWCF.

7. Plaintiff Agnes Spear has been confined at HWCF as a sentenced prisoner for approximately one and one-half months and was confined as a pre-trial inmate there between December, 1983 and March, 1984.

8. Plaintiff Elaine Maile Silva, a sentenced prisoner, has been confined at HWCF for at least six months.

9. Plaintiff Bernadette Kukahia, a convicted prisoner, has been confined at HWCF for about one month.

10. Plaintiff Gypsie Cotton, a pre-trial inmate, has been confined at HWCF for about two and one-half months.

11. Plaintiff Ann Cochran, a pre-trial inmate, has been confined at HWCF for approximately one month.

12. Plaintiff Gene Spurgeon has been confined at OCCC for about fifteen months, previously as a pre-trial inmate and currently as a sentenced inmate since November of 1983.

13. Plaintiff Jeffrey Mueller, a sentenced inmate, has been incarcerated at OCCC for about three and one-half years.

14. Plaintiff John Prince Wilder, a sentenced prisoner, has been confined at OCCC for about four years.

15. Plaintiff Michael McDonald, a pre-trial inmate, has been confined at OCCC for about three months.

16. Plaintiff Daniel Chipman, a pre-trial inmate, has been confined at OCCC for over four months.

17. Plaintiff Joe Martinez, a pre-trial inmate, has been confined at OCCC for about three and one-half months.

18. Defendant George Ariyoshi is the Governor of the State of Hawaii. As chief executive officer of the state, he has

ultimate administrative and fiscal control of and responsibility for, among other state agencies, the Hawaii Department of Social Services and Housing and its Corrections Division.

19. Defendant Franklin Y.K. Sunn, a resident of the State of Hawaii, is the Director of the Hawaii Department of Social Services and Housing (hereinafter DSSH). He has the overall control and supervision of state correctional institutions in Hawaii, including OCCC and HWCF, and responsibility for the promulgation and enforcement of rules, regulations, policies and practices relevant thereto.

20. Defendant Michael Kakesako, a resident of the State of Hawaii, is the Administrator of the Corrections Division of DSSH, and, as such, he is responsible for the direction, supervision, and control of, among other facilities, OCCC and HWCF, including the promulgation and enforcement of rules, regulations, policies and practices relevant thereto.

21. Defendant Theodore Sakai, also a resident of the State of Hawaii, is the Assistant Administrator of the Corrections Division of DSSH and is responsible for duties related to the direction, supervision, and control of, among other facilities, OCCC and HWCF, including the promulgation and enforcement of rules, regulations, policies and practices relevant thereto.

22. Defendant Edwin Shimoda, a resident of the State of Hawaii, is the Administrator of OCCC with responsibility to oversee the administration and operations of OCCC facilities and staff, the custody and control of OCCC inmates, and for the

promulgation and enforcement of rules, regulations, policies and practices relevant thereto.

23. Defendant Howard Murai, a resident of the State of Hawaii, is the Administrator of HWCF, with responsibility to oversee the administration and operations of its facilities and staff, the custody and control of inmates, and for the promulgation and enforcement of rules, regulations, policies and practices relevant thereto.

24. All Defendants are sued in their individual and official capacities.

#### IV. CLASS ACTION ALLEGATIONS

25. This is a class action under Rules 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

26. Plaintiffs are representative parties of a class of all persons who are under the control of DSSH and its Corrections Division and who are confined at OCCC and HWCF, or who may be so confined in the future.

27. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class .

28. The class is so numerous that joinder of the members is impracticable. Current members of the class number over 1,400.

29. The lawsuit challenges various conditions of confinement at the prisons and there are questions of law and fact common to the class.

30. The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class.

V. FACTUAL ALLEGATIONS

31. Severe overcrowding at both the OCCC and HWCF not only exacerbates but, in fact, is frequently the root cause for the many deficient conditions at the prisons. The overcrowding overtaxes virtually every constitutionally required support system and service and creates a harmful and intolerable environment. The overcrowding increases stress, tension, and violence among inmates and creates increased health risks, such as the likelihood of the spread of communicable diseases. This results in an adverse impact on the physical and mental well-being of the prisoners, causing unnecessary and unacceptable pain.

A. Living Conditions -- Shelter and Sanitation  
OCCC

32. The prison is divided into various discrete units, several of which are antiquated and physically deteriorating. The design and layout of the prison makes it structurally unmanageable, jeopardizing the safety of prisoners. The principal housing units are the following:

(a) The area known as the "old cellblock", with a population of about 630, was built around 1918. It is used

principally to house pre-trial detainees as well as federal inmates, homosexuals, and those prisoners confined to protective custody and administrative segregation. Some inmates are confined to small cells, while most of the pre-trial inmates are housed in severely inadequate dormitory space. Sentenced prisoners are also housed in the same dormitories due to lack of space in the prison. The dorms have double bunks as well as mattresses on the floor and hold at least twice as many inmates as any minimally acceptable standards would allow, making adequate security surveillance virtually impossible. In the cell areas, there are at least two men confined to each of the cells, which are smaller than any minimally accepted standards for single occupancy require. Extra mattresses are kept in the hallway, where some inmates are forced to sleep on the floor due to lack of space. In one cellblock there are no toilets in the cells, and in at least two cellblocks, the cells are always open as the locks do not work. There is no adequate dayroom or activity space in this area. Prisoners are subjected to these conditions for extended periods of time.

(b) The "holding unit", housing approximately 35 to 40 inmates now, is an old three-tiered building used primarily for inmates in disciplinary and administrative or management segregation, as well as mostly sentenced prisoners awaiting classification or other available space elsewhere in the prison. It has also housed mentally disturbed and suicidal inmates. Many cells, which are beneath the size of that required by minimally



acceptable standards for one person, hold at least two prisoners per cell. Many cells contain one double bunk, some with mattresses on the floor, and an open toilet and sink. These cells have recently held up to as many as four inmates, with two inmates sleeping on the floor. The minimal dayroom space provided is severely overtaxed. Prisoners are subjected to these conditions for extended periods of time.

(c) Although designed originally for single occupancy, most of the cells in the two-tiered "new module" area, built in 1981, contain a double bunk with a toilet, sink, and small shelf area. Several modules now house three prisoners in a cell designed for one. One prisoner must sleep on a mattress on the floor. One of these modules is used for psychiatric cases, housing two men per cell, while another is used for medical cases. Most modules were designed to house 24 men, but most hold 50 or more inmates. The population in this area is close to 600 inmates who are mostly medium security sentenced prisoners. Prisoners are subjected to these conditions for extended periods of time.

33. Inadequate environmental conditions are further exacerbated or caused by the overcrowding. Prisoners are subjected to these conditions for extended periods of time:

(a) Intolerable noise levels exist, primarily in the old cellblock.

(b) The plumbing system is defective and lacks minimal maintenance, particularly in the older portions of the prison.

There are leaking and flooded toilets, showers, and lavatories with evidence of water spilling onto the tiers creating health risks, especially for inmates forced to sleep on the floor. There are an insufficient number of sanitary facilities due to overcrowding.

(c) Temperatures are often unbearably hot in the cellblocks and dormitories.

(d) Ventilation is poor and harmful to prisoners' health. In some areas, there is a pervasive stench of various body odors. The lack of ventilation exacerbates the risk of airborne disease due to overcrowding.

(e) Lighting is inadequate to meet basic health needs. In at least one cellblock in the holding unit, there are no lights in the cells.

(f) Conditions are generally unsanitary and unhealthy and vermin are commonplace. Insects can enter throughout most of the old cellblock because there are no screens on the corridor windows to the outside.

(g) There is often a serious shortage of sheets and pillows. Prisoners occasionally resort to rolling up their clothes to sleep on. Old, torn, and dirty mattresses are used in the facility.

(h) The entire institution is replete with fire hazards which present an immediate risk of harm. There are an insufficient number of exits throughout the facility.

Polyurethane mattresses (with no fire resistant covers) are found throughout the facility. They are highly flammable and can emit toxic chemicals and smoke. There is insufficient preventive and fire safety equipment. There are a lack of fire drills and insufficient training for staff and inmates in case of an emergency evacuation. The inoperable locks in many parts of the prison exacerbate fire hazards. There is also defective electrical wiring.

HCWF

34. Until recently the entire population of HWCF was confined to the main building, known as Hookipa, located on the Hawaii Youth Correctional Facility grounds. In approximately August of 1984, in order to ease the overcrowding at the main facility, nine women were moved to a small annex on the grounds, the Maluhia Cottage, which now houses approximately 15 inmates. The main facility, however, continues to house over twice as many inmates as it reasonably and safely can, about 87 inmates. The facility is becoming administratively unmanageable because of the continuing need for use of extra annexes due to overcrowding.

35. The main facility is a U-shaped cottage, built around a small interior courtyard. It consists mainly of three dormitories; a detention unit with nine steel-fronted cells; an isolation unit; a multi-purpose area as well as kitchen, laundry, and sewing rooms. There is such a desperate need for space that some staff have even moved to the garage and have converted their offices for use by inmates.

36. The dormitories, which are severely overcrowded, contain metal, double bunk beds very close together with chests of drawers for clothing in the aisles. There are mattresses on the floor, primarily in the isolation unit and the detention unit. Attempts are made to confine women to the dormitories based on their status in a recently implemented behavior modification program, known as the Phase Program. Prisoners, both pre-trial detainees and sentenced inmates, are subjected to this gross overcrowding for extended periods of time.

37. Inadequate environmental conditions are further exacerbated or caused by the overcrowding:

(a) There is a severe shortage of sanitary facilities due to the overcrowding.

(b) There are torn and dirty mattresses throughout the facility. There is frequently a shortage of sheets and pillows.

(c) Due to overcrowding, there is no preventive maintenance or sufficient staff to handle daily problems and repairs.

(d) The electrical system and plumbing system are both inadequate.

38. The Detention Unit, which consists of nine cells, is unfit for human habitation. It is used mainly for inmates in administrative and disciplinary segregation, protective custody, and even for mentally ill inmates. The cells with solid steel fronts, but for a small food slot area, are much smaller than any

accepted standard minimally recommends for single occupancy. In each cell, there is an open toilet, a sink, and a mattress on the floor, occasionally with no bedding. On occasion, two or more women have been confined to an individual cell. Inmates are subjected to these conditions for extended periods of time. The officer for the unit is posted in the laundry room next door and cannot hear inmates should they call for help when the machines are operating. The ventilation in these cells is totally inadequate.

39. The entire institution is a fire hazard. There is an inadequate number of exits; insufficient plans and training for fire evacuation; and ineffective or non-existent fire prevention and safety equipment, such as a fire alarm system. There are dangerous, toxic producing polyurethane mattresses used at the facility.

B. Food Services

40. Overall conditions in the food service areas at OCCC and HWCF constitute serious public health hazards. Food is prepared, stored, handled, and served in an unhealthy, unsafe manner, endangering the lives of prisoners.

41. The kitchen facility at OCCC is dirty, of a limited size for the population, and deficient, with non-functioning and insufficient equipment. Although designed to prepare only 500 servings per meal, the kitchen must now produce 1,400 servings per meal for staff and inmates due to the increased population. There is inadequate space for proper food storage and

preparation. The HWCF kitchen is small and only used for limited preparation and serving, as hot meals are trucked into the facility. Food is served at unsafe temperatures and hot water for dishwashing is in short supply. There is insufficient equipment and utensils at HWCF. The presence of vermin is evident at food preparation areas in both prisons.

42. The feeding area in the older portion of OCCC is dark, dirty, hot, and crowded. The multi-purpose area in the women's facility must also be used as a dining area.

43. There is no adequate system for the provision of special therapeutic diets nor is there a dietician at either facility.

C. Protection from Harm

44. Overcrowding leads to scarcity of resources, tension and stress which in turn encourage inmate confrontations and violence. Other conditions also create an unsafe environment for inmates. The defendants' indifference to and failure to provide reasonable personal safety to inmates at both facilities is evident.

45. The prisons lack employment, education and recreational opportunities, resulting in pervasive idleness, in large part due to overcrowding. The few employment or educational opportunities that exist are provided mostly by volunteers. There is a shortage of staff and space due to overcrowding for such activities. Many inmates receive wholly inadequate outdoor exercise, endangering their health. The

idleness leads to tension and frustration and aggressive acts by prisoners.

46. Security staffing levels at both institutions are completely inadequate to provide for inmate safety. These dangerously low staffing levels are rendered even more inadequate because of poor staff management, communications and training.

47. Inmates are not properly classified at either facility. Any classification system is rendered virtually inoperable due to the lack of space and overcrowding. Classification decisions are primarily determined by availability of a bunk rather than individual inmate characteristics. This results in housing together aggressive or mentally ill inmates with potential victims, and personal safety is jeopardized due to assaults. Pre-trial and sentenced inmates are often housed together in cells and dormitories due to lack of space. The Phase Program at HWCF also renders classification meaningless.

48. Personal safety is jeopardized due to lack of adequate security precautions and Defendants' failure to adequately monitor and supervise dormitories due to overcrowding and understaffing. At the OCCC, weapons control is lax. There are inadequate written policies and training of security staff. The physical layout, particularly of the OCCC, also hampers adequate protection of inmates.

#### D. Health Services

49. Medical and mental health care and treatment at both facilities is totally inadequate and constitutes deliberate

indifference to prisoners' serious medical needs. Routine, emergency, and basic preventive care are inadequate. There is a high percentage of inmates, particularly at OCCC, with serious medical problems, including epilepsy, diabetes, and even active tuberculosis. Because of the violence among prisoners, considerable first aid care is also needed.

50. The overcrowding has seriously exacerbated the deficiencies in staff and services and increases the likelihood of the transmission of communicable diseases and creates other health risks.

51. There is a severe shortage of all medical personnel at both facilities, and particularly a serious absence of physicians. No medical doctor even visits HWCF. A registered nurse serves as the chief medical authority at OCCC. There is no 24-hour coverage at either facility, with a licensed practical nurse at HWCF only visiting twice a day. Staff is not equipped to properly diagnose and treat inmates.

52. Insufficient medical screenings and examinations are done at both facilities. This encourages the risk of transmission of communicable diseases. There was an outbreak of lice recently on one of the tiers in the old cellblock at OCCC. There is a backlog in performing the few physical examinations that are done at OCCC.

53. Medical facilities and equipment necessary for the delivery of minimally adequate health care are not available at either facility. There are no facilities or medical personnel on



site at HWCF so the women must be transported to OCCC for care. There are problems with transportation due to limited staff and vehicles. Access to emergency and routine care is jeopardized. As a result of the shortage of appropriately trained staff and the involvement of correctional officers in the health care referral system, inmates at OCCC lack adequate access to health care.

54. Dental care is wholly inadequate at both facilities.

55. Record keeping is deficient.

56. Mental health facilities, treatment, procedures, staff and services at both prisons are either grossly deficient or non-existent. Yet there are a high number of mentally retarded and seriously mentally ill inmates at OCCC and HWCF. Moreover, the overcrowding, violence, idleness, and poor physical conditions of the prisons create very high levels of stress among prisoners. As a result, mental health services are particularly needed by a high proportion of inmates.

57. Staff is wholly inadequate. Only one part-time psychiatrist is employed by the OCCC. Occasionally, a psychiatrist and a psychologist make visits to HWCF.

58. At OCCC, some of the inmates identified as psychiatric cases are kept in a module area in an inadequate setting. There are also pre-trial inmates with mental health problems who are kept in an old, tiered cellblock in cells which do not lock. There are no therapeutic programs for the men, and

staff often rely on volunteers for the limited programming there is. Many inmates remain unidentified in terms of mental health needs due to an inferior assessment and referral system.

59. Actively mentally ill women are among those held in the woefully sub-standard detention unit or in the isolation unit. Such inferior physical conditions in these cells can actually induce severe mental decompensation. At least one woman attempted suicide in the detention unit recently; another was held in the unit after having attempted suicide. No therapy or counseling is provided due to staff shortages and lack of appropriate facilities at the women's prison.

60. Medication supervision and administration is inadequate, yet a very high percentage of inmates is on psychotropic medications. Psychotropic drugs are prescribed as virtually the only form of treatment.

#### E. Phase Program at HWCF

61. In approximately May of 1984, Defendants instituted a new behavior modification system at HWCF known as the Phase Program. It was imposed on the entire population. When the program was implemented, no clear adequate guidelines were fully developed nor was written material provided to inmates as notice of what was expected of them. The program was designed by persons with no specialized training in this area, and the program has not been tested or validated.

62. The Phase Program regulates almost every aspect of an inmate's daily life, which aspects are arbitrarily labelled as

"privileges". More acceptable behavior by and motivation for inmates is sought through the program. "Privileges" include such every day items or activities as use of personal clothing, including undergarments; outdoor recreation; and contact with the outside, such as phone calls and visits.

63. There are four mandatory phases: "Pre-phase" and "Phase I" through "Phase III". An inmate must maintain a "perfect record" avoiding various types of disciplinary infractions, and must meet certain tasks for a required minimum period of time before being promoted to the next phase. There is an inordinately long period of time before all "privileges" can be earned, by which time many women will have been released from prison.

64. Because of the fundamental defects in design and implementation of the phase program, it cannot, and does not, address the specific behavior problems of specific individuals. The result of these defects is a system that is so arbitrary and unfair that it lacks any rational penological purpose and is, in fact, punitive.

65. Inmates play a major role in administering this system and meting out punishments. Neither staff members nor prisoners are adequately trained or educated in the system's complex provisions. Punishments are imposed within the program without regard to procedural due process.

66. The imposition of arbitrary penalties under this system lacks any legitimate correctional purpose, is dehumanizing

and has an adverse impact on inmates. The unrealistically stringent criteria imposed and inherent unfairness likely will cause many to fail, produce frustration, and even lead to more aggressive behavior.

67. The system is summarily imposed on all prisoners with no individualized showing of need. The system is arbitrary and purposeless and in fact punitive, resulting in a harmful impact on inmates.

## VI. CLAIMS FOR RELIEF

### First Claim

68. Plaintiffs reallege and incorporate by reference paragraphs 1 through 60.

69. Defendants fail to provide Plaintiffs with the basic necessities of life, including adequate food, shelter, sanitation, medical and mental health care, and personal safety, especially since the ill effects of each deprivation are exacerbated or caused by related conditions including overcrowding. The resulting conditions at the prisons, which are incompatible with contemporary standards of decency, cause unnecessary and wanton infliction of pain and are not reasonably related to any legitimate governmental objectives. Sentenced inmates are thereby subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and pre-trial inmates are subjected to impermissible punitive conditions in violation of the Due Process Clause of the Fourteenth Amendment.

Second Claim

70. Plaintiffs reallege and incorporate by reference paragraphs 1 through 30 and paragraphs 61 through 67.

71. The subjugation of inmates at HWCF to the Phase Program by the Defendants, who implemented and are presently enforcing such a system, deprives Plaintiffs of their right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments of the United States Constitution.

VII. NO ADEQUATE REMEDY AT LAW

72. As a proximate result of the Defendants' policies, practices, procedures, acts and omissions, Plaintiffs have suffered, do suffer, and will continue to suffer immediate and irreparable injury, including physical, psychological and emotional injury. Plaintiffs' physical and psychological health and well-being will continue to deteriorate during the course of their confinement under the conditions described in this complaint. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiffs will continue to be irreparably injured by the policies, practices, procedures, acts and omissions of the Defendants unless this Court grants the injunctive relief that Plaintiffs seek.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class they represent pray this Court:

1. Determine by order pursuant to Rule 23, Federal Rules of Civil Procedure, that this action may be maintained as a class action;

2. Issue a declaratory judgment stating the Defendants' policies, practices, acts and omissions described in this Complaint violate Plaintiffs' rights, guaranteed to them by the Eighth and Fourteenth Amendments to the United States Constitution;

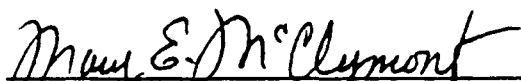
3. Permanently enjoin Defendants, their officers, agents, employees and successors in office, as well as those acting in concert and participating with them, from engaging in the unlawful practices described in this Complaint;

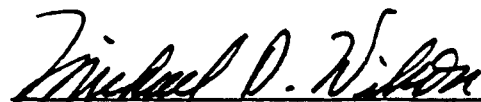
4. Retain jurisdiction of this matter until this Court's order has been carried out;

5. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

6. Grant such other relief as may be just and equitable.

DATED: Honolulu, Hawaii, September 14, 1984.

  
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